IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.01.2007

Coram:

THE HONOURABLE MR.JUSTICE K.N.BASHA

Crl.R.C.No.388 of 2006
and Crl.M.P.No.2401 of 2006

1. V.Kannan
2. Venkatachalam
3. Srinivasan ... Petitioners

vs.

State by District Crime Branch,
Namakkal, Namakkal District, ... Respondent

* * *

Criminal revision petition has been preferred against the order dated 3.1.2006 made in Crl.M.P.No.3166 of 2005, on the file of the Judicial Magistrate No.1, Namakkal.

* * *

For Petitioners : Mr.R.Rajan
For Respondent : Mr.P.Kumaresan, Addl.P.P.

COMMON ORDER

This revision is filed by the petitioners challenging the order of dismissal of the discharge petition filed by them, by the learned Judicial Magistrate No.I, Namakkal, in Crl.M.P.3166 of 2005, dated 3.1.2006.

2. The petitioners have been arrayed as A-3 to A-5. The sum and substance of the allegation levelled against them is that prior to the month of April 2001, A-1 to A-5 committed criminal conspiracy by agreeing to do an illegal act of cheating the public by falsely informing them to form an organisation in the name of J.T.P.R.O. (Jai Thamodhaya Public Relation Organisation) to conduct a small scale industries for a Japan company for which job opportunity to be offered to the persons who were able to appoint organisers by sponsoring 100 members each with collection of a sum of Rs.100/- per member apart from Rs.3000/- a contribution with an intention to cheat the public and collect huge amount from them. Therefore, they have been charged for the alleged offence under Sections 120-B, 420 and 420 r/w.34 IPC.

3. It is also mentioned in the complaint as well as in the charge-sheet that A3 issued a post-dated cheque, dated 3.4.2002, in favour of the de-facto complaint to the extent of Rs.3,88,500/- and the same was

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dishonored on the ground of 'insufficient fund'.

4. The petitioners have filed discharge petition, raising the ground that the first petitioner/A3 has issued a cheque to one of the witnesses and on that basis, and on the return of the cheque on the ground of 'insufficient fund', a case was also filed before the Judicial Magistrate, No.I, Namakkal, in C.C.No.5 of 2003, and the first petitioner was discharged from the above case, on 30.1.2004. It is contended in the discharge petition that the only remedy available for the complainant is to file a complaint under Section 138 of Negotiable Instruments Act and as a matter of fact, the complaint has also been filed under Section 138 of Negotiable Instruments Act and the same is pending before the Judicial Magistrate Court. Therefore, it is contended by the learned counsel for the petitioners that filing a case for the offence of cheating would amount to double jeopardy.

5. Mr.R.Rajan, the learned counsel for the petitioners, vehemently contended that the informant has already initiated proceedings under Section 138 of the Negotiable Instruments Act and as such, he is not entitled to initiate another proceeding for the offence of cheating, as the same would amount to double jeopardy. It is also submitted by the learned counsel for the petitioners that only with a view to humiliate and harass the petitioner, the informant resorted to initiate proceedings for the offence of cheating.

6. The learned Additional Public Prosecutor, on the other hand, contended that the learned Magistrate rightly dismissed the petition filed by the petitioner for discharge. It is contended by the learned Additional Public Prosecutor that the complaint as well as the materials available on record clearly constitutes the offence under Section 420 r/w 34 I.P.C. and there are enough materials available on record to implicate the petitioners herein and there is absolutely no ground made out for discharge of the petitioners. The contention raised by the learned counsel for the petitioners is unacceptable as the proceedings initiated against the petitioners on the basis of the complaint of the de-facto complainant for the offence under Section 420 I.P.C. is very much maintainable in spite of the fact that already the de-facto complainant has initiated proceedings under Section 138 of the Negotiable Instruments Act and the same would not amount to double jeopardy as the ingredients of the offence of cheating is made out on the basis of the complaint.

7. I have carefully considered the rival submissions put forth by the either side and also perused the entire materials available on record, including the complaint and the charge-sheet and other respective records.

8. The only contention raised in this matter is that already the informant has initiated proceedings under Section 138 N.I.Act and as such, he is not entitled to initiate further proceedings for the offence of cheating, as the same would amount to double jeopardy.

8. At the outset I am unable to accept the contention of the learned

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counsel for the petitioners that the affected and aggrieved person, namely, the informant, can initiate both the proceedings, namely, under Sections 138 of the Negotiable Instruments Act as well as for the offence of cheating under Section 420 IPC.

9. The Hon'ble Supreme Court of India has held in CENTRAL BANK OF INDIA VS. M/s. SAXONS FARMS reported in 1999 CRL.L.J. 4571 that,

> "13. Under Section 142 of the Act, Court can take cognizance of an offence punishable under Section 138 only on a complaint in writing made by the payee. Therefore, the police could not have started investigation under Section 138 of the Act. But if a cheque is dishonoured drawer may expose himself to prosecution under various sections of the Indian Penal Code which are cognizable and police could take up investigation. What was indicated in the notice was that in addition to the legal action by the appellant-bank under the Act, option was kept open for taking action against the respondents under the provisions of Indian Penal Code by informing the police. Therefore, the contention of learned counsel for the respondents has no force."

A perusal of the complaint shows that there is an allegation to the effect that the accused had issued a post-dated cheque without making proper arrangements of funds into the credit of his account and as such it is clear that the accused had dishonest intention not to honour the amount even at the time of issuance of the cheque and the act of issuing the cheque which was dishonoured amounts to an offence of cheating. In this case, in the charge sheet also it is specifically mentioned that A-1 to A-5 in pursuance of common intention to cheat witnesses 1 to 6, A-3 issued a post-dated cheque, dated 03.04.2002 in favour of them for various amounts to the extent of Rs.3,88,500/- to be drawn in the ICICI Bank, Namakkal, without sufficient fund. Therefore, there are enough materials available on record to implicate the petitioners, who have been arrayed as A-3 to A-5 for the alleged offence of cheating.

10. The Andhra Pradesh High Court in a Full Bench decision in a case in OPTS MARKETING PVT.LTD. V. STATE OF A.P.(2001 Cr.L.J.1489) has held as follows :

> "Even after introduction of S.138 of the Negotiable Instruments Act, prosecution under S.420, IPC., is maintainable in case of dishonour of cheques or post-dated cheques issued towards payment of price of the goods purchased or hand loan taken, or in discharge of an antecedent debt or towards payment of goods supplier earlier, if the charge-sheet contains an allegation that the accused had dishonest intention not to pay even at the time of issuance of the cheque, and the act of issuing the cheque, which was dishonored, caused damage to his mind, body or reputation."

11. In view of the settled principle of law laid down by the Apex

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Court and the decision of the Full Bench of Andhra Pradesh High Court as cited supra and in view of the materials available on record, this Court is of the considered view that initiation of proceedings for the offence under Section 420 I.P.C., against the petitioner in spite of the proceedings pending against the petitioner for the offence under Section 138 of the Negotiable Instruments Act would not amount to double jeopardy.

12. For the above said reasons, the criminal revision petition is dismissed. Consequently, connected miscellaneous petition is dismissed.

Msk/gg

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Judicial Magistrate No.1, Namakkal.
2. -do-thro the chief Judicial Magistrate, Namakkal.
3. The Public Prosecutor, High Court,Chennai.
+ One cc to Mr. R. Rajan Advocate SR 316
PPV (co)
sg 14/5/07

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